

Vol 3

Office - Supreme Court, U
FILED

MAY 31 1940

CHARLES ELMORE CROP
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939.

No. **1060** 118 ✓

CHAIN O'MINES, INCORPORATED, A CORPORATION,
ET AL.,

Petitioners,

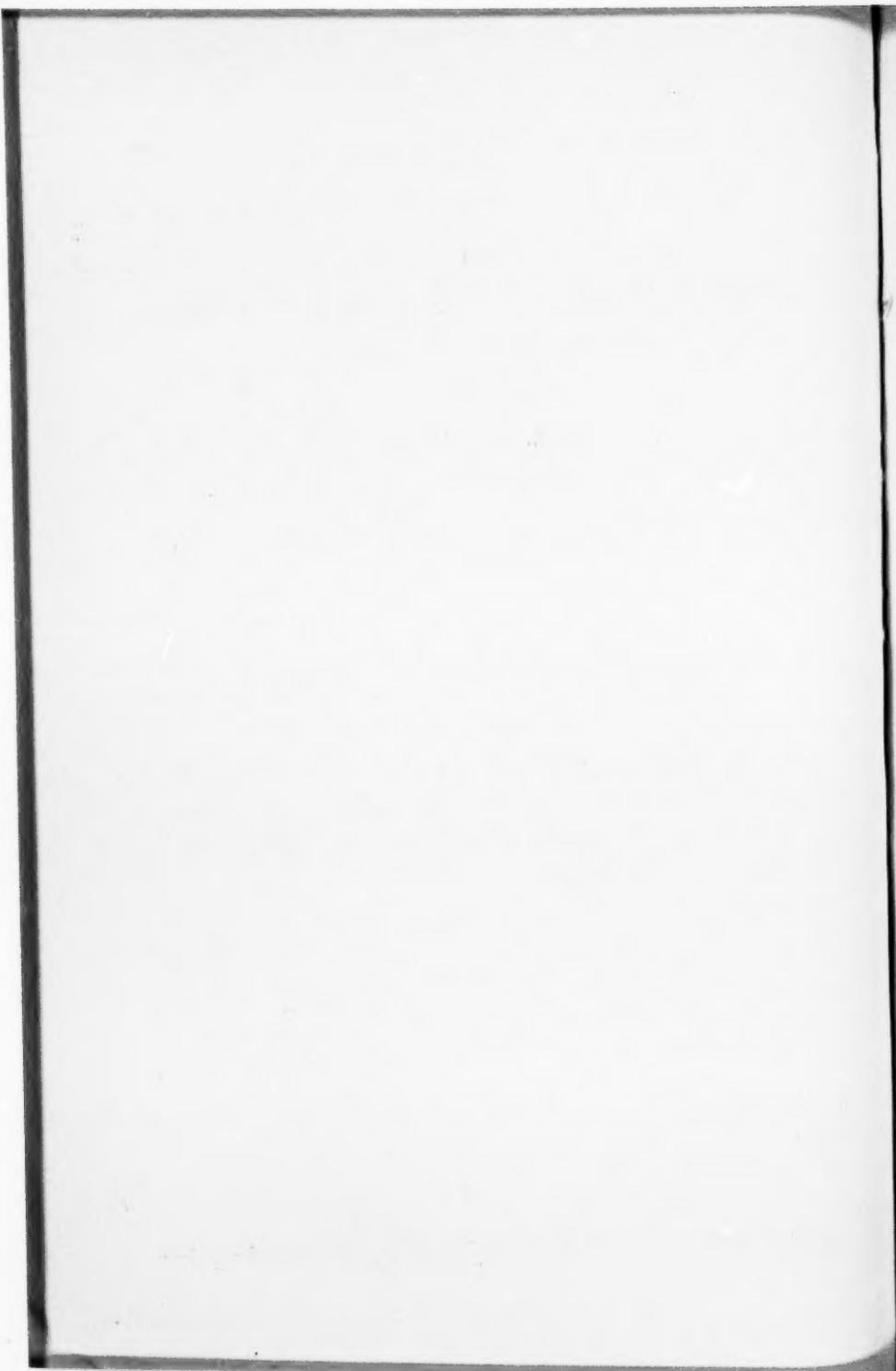
vs.

UNITED GILPIN CORPORATION, A CORPORATION, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT, AND BRIEF IN
SUPPORT THEREOF.

FELIX J. STREYCKMANS,
Chicago, Illinois,
Counsel for Petitioners.

JOHAN WAAGE,
LOUIS COHEN,
Of Counsel.



I N D E X

	PAGE
Petition for Writ of Certiorari	1
Summary Statement of Matters Involved.....	2
Basis of Jurisdiction	3
Questions Presented	4
Reasons Relied on for the Allowance of the Writ	4
 Brief in Support of Petition for Writ of Certiorari	 6
Opinions of the Courts Below	6
Statement of the Case	8
Lien of Edward H. Lewison	9
Lien of Public Service Company of Colorado....	14
Tax Titles	15
Suits to Quiet Title.....	15
Specification of Errors	15
Summary of Argument	17
 Argument	 18
Misconception of Decree	18
Contract and Facts	19
Misconstruction of Law	27
Conflict with Another Decision of Circuit Court of Appeals	32
The Fraud	33
Review of Evidence	34
 Conclusion	 35

CASES CITED

Adamson v. Gilliland, 242 U. S. 350; 61 L. Ed. 356.....	35
Biggins v. Lambert, 213 Ill. 625; 73 N. E. 371, 104 Am. St. Rep. 238	31
Beidler v. Crane, 135 Ill. 92, 25 N. E. 655; 25 Am. St. Rep. 349	31
Davis v. Schwartz, 155 U. S. 631; 30 L. Ed. 289.....	35
Ex parte Chetwood, 165 U. S. 443; 41 L. Ed. 782.....	3
Forsyth v. Hammond, 166 U. S. 506; 41 L. Ed. 1095	3
Feeney v. Runyan, 316 Ill. 246; 147 N. E. 114.....	29
International Ry. Co. v. Davidson, 257 U. S. 506; 66 L. Ed. 341	3
In re County Club Building Corp., 91 Fed. (2d) 713	32
Lawson v. Hunt, 153 Ill. 232; 38 N. E. 629.....	29
Montana Min. Co. v. St. Louis & M. Co., 204 U. S. 204; 51 L. Ed. 444.....	3
McClelland v. Carlan, 217 U. S. 268; 58 L. Ed. 762.....	3
Nelson & Co. v. Leiter, 190 Ill. 414; 60 N. E. 851; 83 Am. Rep. 142	31
People v. Small, 319 Ill. 437.....	33
Pope v. DaPray, 176 Ill. 478; 52 N. E. 58.....	29
Rorick v. Devon Syndicate, 307 U. S. 299; 83 L. Ed. 1303	3
1 Restatement of Law of Restitution, Secs. 158, 177.....	28
Rubin v. Midlinsky, 321 Ill. 436; 152 N. E. 217.....	30
Whitney v. Roberts, 22 Ill. 381.....	31

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1939.

No.

CHAIN O'MINES, INCORPORATED, A CORPORATION,
ET AL.,
Petitioners,
vs.
UNITED GILPIN CORPORATION, A CORPORATION, ET AL..
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.**

*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

The petitioner, Chain O'Mines, Incorporated, a corporation, and certain of its stockholders, by their attorneys, respectfully pray that a writ of certiorari issue to the Circuit Court of Appeals for the Seventh Circuit to review a final judgment of that court rendered March 2, 1940, in above entitled cause (R. 1134). A transcript of the record in the case, including the proceedings in the said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 of the rules of this court. There is included in said proceedings and record, petitioners' petition for rehearing (R. 1147) and respondents' answer to same (R. 1175).

Summary Statement of Matter Involved.

This action involved the interpretation of a written contract between the petitioner, Chain O'Mines (plaintiff below) and the respondent (defendant below) L. M. Seeley providing for the acquisition through a sheriff's deed on execution, of large mining and ore milling properties in Colorado, then belonging to the plaintiff, and the execution by Seeley's assigns of a mortgage on the properties for \$1,500,000. Seeley's assigns contracted to acquire the sheriff's deed title but did not execute the mortgage. He and two of his fellow-defendants, one of whom was a director of plaintiff corporation at the time of the contract, organized the respondent United Gilpin Corporation, which later acquired the title by independent contracts with the holders of the sheriff's deed.

The District Court interpreted the contract as requiring the said respondent corporation to execute and deliver the mortgage to the plaintiff, found Seeley, and his said two fellows guilty of conspiracy to defraud, and of fraud, and decreed restitution of the property to the plaintiff corporation by the respondent corporation without reimbursement of investment.

The Circuit Court of Appeals interpreted the contract as requiring Seeley's assigns to "float" a \$1,500,000 mortgage, and with the proceeds, pay plaintiff's debts, and thereafter restore the property to the plaintiff. It reviewed the evidence, found the venture to have been unprofitable to respondents, and on that ground excused the giving of the mortgage, found them not guilty of fraud, and ordered the dismissal of the bill.

Basis of Jurisdiction.

The jurisdiction of this court is invoked under Section 240 of the Judicial Code of the United States as amended (28 U. S. C. A., 347).

A.

There are in this cause special and important reasons for this court's intervention.

B.

The Circuit Court of Appeals for the Seventh Circuit has so far departed from the accepted and usual course of judicial proceedings, as to call for the exercise of this Court's power of supervision.

C.

The Circuit Court of Appeals has decided an important question of general law in a way untenable and in conflict with the weight of authority.

D.

The Circuit Court of Appeals has decided a question of local law in a way in conflict with applicable local decisions.

Ex parte Chetwood, 165 U. S. 443, 41 L. Ed. 782;

Forsyth v. Hammond, 166 U. S. 506, 41 L. Ed. 1095;

Montana Min. Co. v. St. Louis & M. Co., 204 U. S. 204, 51 L. Ed. 444;

McClellan v. Carlan, 217 U. S. 268, 54 L. Ed. 762;

International Railway Co. v. Davidson, 257 U. S. 506, 66 L. Ed. 341;

Rorick v. Devon Syndicate, 307 U. S. 299, 83 L. Ed. 1303.

Questions Presented.

1. The right of the Circuit Court of Appeals to review the evidence and reverse the findings of fact of the District Court.
2. The interpretation of the aforesaid contract of June 19, 1934, and determination whether thereunder the question of the profitableness of the venture was material.
3. The right of a director of the plaintiff corporation to participate in a course of action whereby it was deprived of its assets without compensation.

Reasons Relied on for the Allowance of the Writ.

The discretionary power of this Court is invoked upon the following grounds:

1. The Circuit Court of Appeals for the Seventh Circuit has misapprehended and misconceived the findings of fact, conclusions of law and the decree of the District Court.
2. The Circuit Court of Appeals has misconstrued the language and the true intent and meaning and hence the legal effect of the contract of June 19, 1934, in evidence in this cause.
3. The Circuit Court of Appeals has misconceived the legal effect of the undisputed documentary exhibits and other evidence in the case.
4. The decision of the Circuit Court of Appeals herein is in conflict with a decision of the same Court (with different personnel) on the same question or matter herein involved.
5. The judgment of the Circuit Court of Appeals is contrary to the facts in evidence in this cause and the law applicable thereto.

6. The opinion and judgment of the Circuit Court of Appeals is contrary to equity, good conscience and justice.

7. The Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings in that said Court reversed the findings of fact of the trial court based upon substantial evidence.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings in the Circuit Court of Appeals had in this cause, to the end that said cause may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed; and that petitioners be granted such other and further relief as may seem proper.

FELIX J. STREYCKMANS,
Counsel for Petitioners.

JOHAN WAAGE,
LOUIS COHEN,

Of Counsel.